

## GENERAL PROVISIONS

1. **DEFINITIONS:** Throughout this contract, the following terms shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified.
  - a) **"Business entity"** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
  - b) **"Buyer"** means the State of California and/or the State's authorized contracting official.
  - c) **"Contract"** means this purchase order, contract or agreement, by whatever name known or in whatever format used.
  - d) **"Contractor"** means the business entity with whom the State enters into a contract. Contractor shall be synonymous with "supplier", "vendor" or other similar term.
  - e) **"Cost or Pricing Data"** means facts available at the time of price agreement that prudent buyers and sellers would reasonably expect to affect price significantly. Cost or pricing data are factual, not judgmental, and are therefore, verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also may include such factors as (1) sub-tier supplier quotations; (2) nonrecurring costs; (3) information on changes in production methods and in production or purchasing volume; (4) data supporting projections of business prospects and objectives and related operations costs; (5) unit-cost trends such as those associated with labor efficiency; (6) make-or-buy decisions; (7) estimated resources to attain business goals; (8) information on management decisions that could have a significant bearing on costs; (9) supplier negotiation decrement; and (10) cost/price analysis.
  - f) **"Goods"** means all types of tangible personal property, including but not limited to materials, supplies, equipment ("commodities") and information and telecommunication technology.
  - g) **"State"** means the State of California, its employees and authorized representatives.
2. **CONTRACT FORMATION:**
  - a) If this contract results from a sealed bid offered in response to a solicitation conducted pursuant to Chapters 2 (commencing with Section 10290), 3 (commencing with Section 12100), and 3.6 (commencing with Section 12125) of Part 2 of Division 2 of the Public Contract Code (PCC), then contractor's bid is a firm offer to the State which is accepted by the issuance of this contract and no further action is required by either party.
  - b) If this contract results from a solicitation other than described in paragraph a), above, contractor's quotation or proposal is deemed a firm offer and this contract document is the State's acceptance of that offer.
3. **COMPLETE INTEGRATION:** This contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the contract.
4. **SEVERABILITY:** The contractor and the State agree that if any provision of this contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision. Should the offending provision go to the heart of the contract, the contract shall be terminated in a manner commensurate with the interests of both parties.
5. **JOINT BIDS/JOINT CONTRACTORS:** A joint bid (which is defined as two or more suppliers bidding jointly in one solicitation response) which resulted in the award of this contract shall be deemed one indivisible contract. Each joint contractor will be jointly and severally liable for the performance of the entire contract, and the joint contractors must designate, in writing, one individual having authority to represent them in all matters relating to the contract. The State assumes no responsibility or obligation for the division of orders or purchases among joint contractors.
6. **INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of contractor, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of the State.
7. **APPLICABLE LAW:** This contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this contract.
8. **COMPLIANCE WITH STATUTES AND REGULATIONS:** Contractor warrants and certifies that in the performance of this contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the State against any loss, cost, damage or liability by reason of contractor's violation of this provision.
9. **CONTRACTOR'S POWER AND AUTHORITY:** The contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this contract.
10. **ASSIGNMENT:** This contract shall not be assignable by the contractor in whole or in part without the written consent of the State; such consent will not be unreasonably withheld.
11. **WAIVER OF RIGHTS:** Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.
12. **INTERPRETATION OF CLAUSE HEADINGS:** The use of headings throughout the contract is for convenience only and shall not be used to interpret or to govern the meaning of any specific provision of the contract.
13. **ORDER OF PRECEDENCE:** In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this contract, the following order of precedence shall apply:
  - a) special terms and conditions;
  - b) general terms and conditions, including these General Provisions;
  - c) specifications; and
  - d) all other attachments incorporated herein by reference.

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The specifications shall prevail over any subsidiary documents referenced therein.

### 14. PACKING AND SHIPMENT:

- a) All goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
  - i) show the number of the container and the total number of containers in the shipment; and
  - ii) the number of the container in which the packing sheet has been enclosed.
- b) All shipments by contractor or its subcontractors must include packing sheets identifying: the State's contract number; item number; quantity and unit of measure; part number and description of the goods shipped; and appropriate evidence of inspection, if required. Goods for different contracts shall be listed on separate packing sheets.
- c) Shipments must be made as specified in this contract, as it may be amended, or otherwise directed in writing by the State's Transportation Management Unit within the Department of General Services, Procurement Division.

### 15. TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:

No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the contract.

- a) Contractor must strictly follow contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the buyer.
- b) If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by the Transportation Management Unit within the Department of General Services Procurement Division and a waiver is granted.
- c) On "F.O.B. Shipping Point" transactions, should any shipments under the contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the equipment and/or material, contractor, on request of the State, shall at contractor's own expense assist the State in establishing carrier liability by supplying evidence that the equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

### 16. TIME IS OF THE ESSENCE:

Time is of the essence in this contract.

### 17. DELIVERY:

Contractor shall strictly adhere to the delivery and completion schedules specified in this contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess goods, and may return them to contractor at contractor's expense or utilize any other rights available to the State at law or in equity.

### 18. SUBSTITUTIONS:

Substitution of goods may not be tendered without advance written consent of the buyer. Contractor shall not use any specification in lieu of those contained in the contract without written consent of the buyer.

### 19. INSPECTION, ACCEPTANCE AND REJECTION:

- a) Contractor will provide and maintain a quality assurance system acceptable to the State covering goods and services under this contract and will tender to the State only those goods that have been inspected and found to conform to this contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the State during contract performance and for three years after final payment.
- b) All goods may be subject to inspection and test by the State or its authorized representatives, at all times and places, including the period of manufacture or performance.
- c) Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection. All goods to be delivered hereunder may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.
- d) The State shall give notice of rejection of goods delivered or services performed hereunder within a reasonable time after receipt of such goods or performance of such services. Acceptance by the State shall not waive any rights that the State might otherwise have at law or by express reservation in this contract with respect to any nonconformity.
- e) Contractor shall permit the State to review procedures, practices, processes and related documents to determine the acceptability of Contractor's quality assurance system or other business practices related to performance of the contract.
- f) It shall be the contractor's continuing obligation throughout the term of the contract to advise the buyer in writing within three (3) working days following any discovery of potential or actual nonconformances prior to or during contract performance and/or subsequent delivery of goods or performance of services under this contract.

### 20. SAMPLES:

- a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products bid and/or specified in the contract.
- b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at contractor's expense.

### 21. WARRANTY:

Unless otherwise specified, the warranties contained in this contract begin after acceptance has occurred.

- a) Contractor warrants that goods and services furnished hereunder will conform to the requirements of this contract (including all descriptions, specifications and drawings made a part hereof), and such goods will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by the State, free from defects in design. The State's approval of designs or specifications furnished by contractor shall not relieve the contractor of its obligations under this warranty.
- b) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies and users of the goods or services.

### 22. SAFETY AND ACCIDENT PREVENTION:

In performing work under this contract on State premises, contractor shall conform to any specific safety requirements contained in the contract or as required by law or regulation. Contractor shall take any additional precautions as the State may reasonably require for safety and

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accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this contract in accordance with the default provisions hereof.

**23. INSURANCE:** When performing work on property in the care, custody or control of the State, contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance the State deems appropriate under the contract. Contractor shall furnish an insurance certificate evidencing required insurance coverage acceptable to the State. Upon request by the State, the contractor may be required to have the State shown as an "additional insured" on selected policies.

**24. TERMINATION FOR DEFAULT:**

- a) The State may, subject to paragraphs (d) and (e) below, by written notice of default to the contractor, terminate this contract in whole or in part if the contractor fails to:
  - i) Deliver the goods or to perform the services within the time specified in the contract or any amendment thereto;
  - ii) Make progress, so as to endanger performance of this contract (but see subparagraph (b) below); or
  - iii) Perform any of the other provisions of this contract (but see subparagraph (b), below).
- b) The State's right to terminate this contract under subparagraphs (a)(ii) and (a)(iii) above, may be exercised if the contractor does not cure such failure within ten (10) days (or more if authorized in writing by the buyer) after receipt of the notice from the buyer specifying the failure.
- c) If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the buyer considers appropriate, goods or services similar to those terminated, and the contractor will be liable to the State for any excess costs for those goods or services. However, the contractor shall continue the work not terminated.
- d) Except for defaults of subcontractors at any tier, the contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the contractor. Examples of such causes include, but are not limited to:
  - i) Acts of God or of the public enemy,
  - ii) Acts of the federal or state government in either its sovereign or contractual capacity,
  - iii) Fires,
  - iv) Floods,
  - v) Epidemics,
  - vi) Quarantine restrictions,
  - vii) Strikes,
  - viii) Freight embargoes, and
  - ix) Unusually severe weather.In each instance, the failure to perform must be beyond the control and without the fault or negligence of the contractor.
- e) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the contractor and subcontractor, and without the fault or negligence of either, the contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted goods or services were obtainable from other sources in sufficient time for the contractor to meet the required delivery schedule.
- f) If the contract is terminated for default, the State may require the contractor to transfer title and deliver to the State, as directed by the buyer, any:
  - i) Completed goods, and
  - ii) Partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the contractor has specifically produced or acquired for the terminated portion of this

contract. Upon direction of the buyer, the contractor shall also protect and preserve property in its possession in which the State has an interest.

- g) The State shall pay contract price for completed goods delivered and accepted. The contractor and buyer shall agree on the amount of payment for manufacturing materials delivered and accepted for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the buyer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- h) If, after termination, it is determined that the contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
- i) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

**25. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:**

- a) In the event any goods furnished or services provided by the contractor in the performance of the contract should fail to conform to the requirements herein, or to the sample submitted by the contractor, the State may reject the same, and it shall become the duty of the contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the contract.
- b) In addition to any other rights and remedies the State may have, the State may require contractor, at contractor's expense, to ship goods via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the contractor.
- c) In the event of the termination of the contract, either in whole or in part, by reason of default or breach by the contractor, any loss or damage sustained by the State in procuring any items which the contractor agreed to supply shall be borne and paid for by the contractor.
- d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to contractor or to make a claim against the contractor therefore.

**26. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:**

- a) The contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the goods either at the contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the contractor.
- b) Contractor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the contractor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the goods provided by the contractor during the contract.

**27. INDEMNIFICATION:** Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm, or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or

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resulting to any person, firm or corporation which may be injured or damaged by contractor in the performance of this contract.

- 28. DISCOUNTS:** All prompt payment discounts incorporated into the contract or stated on contractor's invoice shall be taken if the payment is made within the discount period. In the event that more than one discount is provided, the State will take the most favorable discount.
- 29. INVOICES:** Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.
- 30. REQUIRED PAYMENT DATE:** Unless otherwise specified, payment will be made in accordance with Government Code Sections 927 et seq., as applicable. Payment shall not be due until the later of: (a) the date of acceptance of goods or performance of services; or (b) receipt of an accurate invoice.
- 31. TAXES:** The State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or goods supplied to the State pursuant to this contract.
- 32. NEWLY MANUFACTURED GOODS:** All goods furnished under this contract shall be newly manufactured goods; used or reconditioned goods are prohibited, unless otherwise specified.
- 33. CONTRACT MODIFICATION:** The contract shall not be modified by or interpreted by reference to any course of dealing or usage of trade and shall not be modified by any course of performance. No modification of the contract shall be effective unless in writing and signed by the State.
- 34. UNILATERAL CHANGES:**
- The State may, any time, exclusively in a writing signed by the State, and without notice to sureties, make changes within the general scope of this contract which affect the (a) drawings, designs or specifications; (b) method of shipment or packing; (c) place of inspection, delivery or acceptance; (d) delivery schedules; or (e) description of services to be performed; time of performance of services (i.e., hours of the day, days of the week, etc.); or place of performance of services.
  - If any such change causes an increase or decrease in the cost of, or the time required for, performance of this contract, a contract adjustment shall be made in the contract price or delivery schedule or both, and the contract shall be modified in writing accordingly. Any request by contractor for adjustment under this provision must be asserted in writing to the buyer not later than thirty (30) days after the date of receipt by contractor of written change direction, or within such extension as the State may grant in writing. The State may, in its sole discretion, consider any such request regardless of when asserted. Pending any such adjustment, contractor will diligently proceed with the contract as modified. Where the cost of property made excess or obsolete as a result of the change is included in contractor's request for contract adjustment, the State shall have the right to direct the manner of disposition of such property. The State shall have the right to require the submission of supporting cost or pricing data and/or to inspect contractor's pertinent books and records for the purpose of verifying contractor's request and determining the basis for entitlement to an adjustment.
  - Contractor's request for contract adjustment shall be in the form of a complete change proposal fully supported by factual information and shall separately identify all increases and all

decreases in costs. The request shall be submitted by a person duly authorized by the contractor in a signed writing that contains the following certification statement: "I certify that the request is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief and that the amount requested accurately reflects the contract adjustment for which (insert contractor's name here) believes the State is liable."

- 35. CONFIDENTIALITY OF DATA:** All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the contractor in order to carry out this contract, or which become available to the contractor in carrying out this contract, shall be protected by the contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the contractor. If the methods and procedures employed by the contractor for the protection of the contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the contractor's possession, is independently developed by the contractor outside the scope of this contract, or is rightfully obtained from third parties.
- 36. NEWS RELEASES:** Unless otherwise exempted, news releases pertaining to this contract shall not be made without prior written approval of the Department of General Services.
- 37. PATENT, COPYRIGHT and TRADE SECRET INDEMNITY:**
- Contractor shall hold the State of California, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the contract.
  - Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
  - Contractor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the goods or software supplied by the contractor or the operation of such goods pursuant to a current version of contractor supplied operating software infringes a United States patent or copyright or violates a trade secret. The contractor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:
    - That the contractor shall be notified within a reasonable time in writing by the State of any notice of such claim; and,
    - That the contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, the State shall have the option to participate in such action at its own expense.
  - Should the goods or software, or the operation thereof, become, or in the contractor's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, the State shall permit the contractor at its option and expense either to procure for the State the

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right to continue using the goods or software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such goods or software by the State shall be prevented by injunction, the contractor agrees to take back such goods or software and make every reasonable effort to assist the State in procuring substitute goods or software. If, in the sole opinion of the State, the return of such infringing goods or software makes the retention of other goods or software acquired from the contractor under this contract impractical, the State shall then have the option of terminating such contracts, or applicable portions thereof, without penalty or termination charge. The contractor agrees to take back such goods or software and refund any sums the State has paid contractor less any reasonable amount for use or damage.

- e) The contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
  - i) The combination or utilization of goods furnished hereunder with equipment or devices not made or furnished by the contractor; or,
  - ii) The operation of equipment furnished by the contractor under the control of any operating software other than, or in addition to, the current version of contractor-supplied operating software; or
  - iii) The modification by the State of the equipment furnished hereunder or of the software; or
  - iv) The combination or utilization of software furnished hereunder with non-contractor supplied software.
- f) The foregoing states the entire liability of the contractor to the State with respect to infringement of patents, copyrights or trade secrets.

**38. EXAMINATION AND AUDIT:** Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this contract.

**39. COST OR PRICING DATA:** At all times during and following the period of contract performance, the State may require contractor to furnish such cost and pricing data as the State deems necessary to assess the reasonableness of contract pricing, including the reasonableness of changes.

**40. DISPUTES:**

- a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, contractor shall submit to the Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this contract, unless the State, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the contract, contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the contract adjustment for which contractor believes the State is liable. If the contractor is not satisfied with the decision of the Department Director or designee, the contractor may appeal

the decision to the Department of General Services, Deputy Director, Procurement Division. In the event that this contract is for information technology goods and/or services, the decision may be appealed to an Executive Committee of State and contractor personnel, in accordance with established procedures.

- b) Pending the final resolution of any dispute arising under, related to or involving this contract, contractor agrees to diligently proceed with the performance of this contract, including the delivery of goods or providing of services in accordance with the State's instructions. Contractor's failure to diligently proceed in accordance with the State's instructions shall be considered a material breach of this contract.
- c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Department Director or designee or Deputy Director, Procurement Division if an appeal was made. If the State fails to render a final decision within 90 days after receipt of contractor's demand, it shall be deemed a final decision adverse to contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

**41. STOP WORK:**

- a) The State may, at any time, by written Stop Work Order to the contractor, require the contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the Stop Work Order is delivered to the contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to the contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
  - i) Cancel the Stop Work Order; or
  - ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this contract.
- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the contract price, or both, and the contract shall be modified, in writing, accordingly, if:
  - i) The Stop Work Order results in an increase in the time required for, or in the contractor's cost properly allocable to the performance of any part of this contract; and
  - ii) The contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this contract.
- c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- d) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated for default, the State may allow, by equitable adjustment or otherwise, reasonable costs resulting from the Stop Work Order.

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- e) An appropriate equitable adjustment may be made in any related contract of the contractor that provides for adjustment and is affected by any Stop Work Order under this clause. The State shall not be liable to the contractor for loss of profits because of a Stop Work Order issued under this clause.

### 42. TERMINATION FOR THE CONVENIENCE OF THE STATE:

- a) The State may terminate performance of work under this contract for its convenience in whole or, from time to time, in part, if the Department Director or designee determines that a termination is in the State's interest. The Department Director or designee shall terminate by delivering to the contractor a Notice of Termination specifying the extent of termination and the effective date thereof. The parties agree that, as to the terminated portion of the contract, the contract shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the contract shall not be void.
- b) After receipt of a Notice of Termination, and except as directed by the State, the contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
  - i) Stop work as specified in the Notice of Termination.
  - ii) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
  - iii) Terminate all subcontracts to the extent they relate to the work terminated.
  - iv) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification of which will be final for purposes of this clause.
  - v) As directed by the State, transfer title and deliver to the State (a) fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (b) completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the State.
  - vi) Complete performance of the work not terminated.
  - vii) Take any action that may be necessary or as the State may direct for the protection and preservation of the property related to this contract that is in the possession of the contractor and in which the State has or may acquire an interest and to mitigate any potential damages or requests for contract adjustment or termination settlement to the maximum practical extent.
- c) At the completion of the contractor's termination efforts, the contractor may submit to the State a list, indicating quantity and quality of termination inventory not previously disposed of, and request instruction for disposition of the residual termination inventory.
- d) After termination, the contractor shall submit a final termination settlement proposal to the State in the form and with the certification prescribed by the State. The contractor shall submit the proposal promptly but no later than ninety (90) days from the effective date of termination, unless extended in writing by the State upon written request of the contractor within the ninety (90) day period. However, if the State determines that the facts justify it, a termination settlement proposal may be received and acted on after the expiration of the filing period or any extension. If the contractor fails to submit the proposal within the time allowed, the State may determine on the basis of information available, an equitable adjustment amount, if any, due the contractor because of the termination and shall pay the amount determined.
- e) The contractor and the State may agree upon the whole or any part of the amount to be paid because of the termination. The

amount may include a reasonable allowance for profit on work done, including a reasonable amount for accounting, legal, clerical and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data; and storage, transportation and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. However, the agreed amount may not exceed the total contract price as reduced by

- i) the amount of payments previously made and
- ii) the contract price of work not terminated.

The contract shall be amended, and the contractor paid the agreed amount.

- f) If the contractor and the State fail to agree on the whole amount to be paid because of the termination of the work, the State shall pay the contractor the amounts determined by the State as follows, but without duplication of any amounts agreed on as set forth above:
  - i) The contract price for completed supplies or services accepted by the State (or sold or acquired) not previously paid for, adjusted for any saving of freight and other charges.
  - ii) The total of:
    - a) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid; and
    - b) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract; and
    - c) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- g) Except for normal spoilage, and except to the extent that the State expressly assumed the risk of loss, the State shall exclude from the amounts payable to the contractor, the fair value, as determined by the State, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the State or to a buyer.
- h) The contractor shall use generally accepted accounting principles and sound business practices in determining all costs claimed, agreed to, or determined under this clause. Such costs shall be allocable to the terminated contract or portion thereof, allowable under applicable laws, regulations, generally accepted accounting principles, good business judgment and objectively reasonable.
- i) The contractor shall have the right of appeal, under the Disputes clause, from any determination made by the State, except that if the contractor failed to submit the termination settlement proposal within the time provided and failed to request a time extension, there is no right of appeal. If the State has made a determination of the amount due, the State shall pay the contractor
  - i) the amount determined if there is no right of appeal or if no timely appeal has been taken, or
  - ii) the amount finally determined on appeal.Following any attempted administrative resolution with the Department Director or designee, the contractor may proceed in accordance with the Disputes clause of the contract.
- j) In arriving at the amount due the contractor under this clause, there shall be deducted:
  - i) All payments to the contractor under the terminated portion of this contract;
  - ii) Any claim which the State has against the contractor under this or any other contract; and
  - iii) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the contractor or

## GENERAL PROVISIONS

sold under the provisions of this clause and not recovered by or credited to the State.

- k) If the termination is partial, the contractor may file a proposal with the State for an equitable adjustment of the price(s) of the continued portion of the contract. The State shall make any equitable adjustment agreed upon. Any proposal by the contractor for an equitable adjustment under this clause shall be requested within thirty (30) days from the effective date of termination unless extended in writing by the State.
- l) The State may:
  - i) Under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the contractor for the terminated portion of the contract, if the State believes that the total of these payments will not exceed the amount to which the contractor will be entitled.
  - ii) If the total payments exceed the amount finally determined to be due, the contractor shall repay the excess to the State upon demand, together with interest computed at the rate established by the California Treasurer's Pooled Money Investment Fund Rate. Interest shall be computed for the period from the date the excess payment is received by the contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the contractor's termination settlement proposal because of retention or other disposition of termination inventory until ten (10) days after the date of the retention or disposition, or a later date determined by the State because of the circumstances.
- m) In determining the amount payable to the contractor and notwithstanding any other provision, if it appears that the contractor would have sustained a loss on the entire contract had it been completed, the State shall allow no profit and shall reduce the settlement to reflect the indicated rate of loss.
- n) Unless otherwise provided in this contract or by statute, the contractor shall maintain all records and documents relating to the terminated portion of this contract for three years after final settlement. This includes all books and other evidence bearing on the contractor's costs and expenses under this contract. The contractor shall make these records and documents available to the State, at the contractor's office, at all reasonable times, without any direct charge. If approved by the State, photographs, microphotographs or other authentic reproductions may be maintained instead of original records and documents.

### 43. TERMINATION FOR NON-APPROPRIATION OF FUNDS:

- a) If the term of this contract extends into fiscal years subsequent to that in which it is approved, such continuation of the contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, contractor agrees to take back any affected goods furnished under this contract, terminate any services supplied to the State under this contract, and relieve the State of any further obligation therefor.
- b) **STATE AGREES THAT IF PARAGRAPH (a) ABOVE IS INVOKED, GOODS SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.**

### 44. CONFLICT OF INTEREST:

- a) Current State Employees (PCC Section 10410):
  - i) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee

receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity or enterprise is required as a condition of regular State employment.

- ii) No officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.

### b) Former State Employees (PCC Section 10411):

- i) For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency.
- c) For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.

**45. PRIORITY HIRING CONSIDERATIONS:** If this contract is for services in excess of \$200,000, the contractor shall give priority consideration in filling vacancies in positions funded by the contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.

**46. COVENANT AGAINST GRATUITIES:** The contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the contractor, or any agent or representative of the contractor, to any officer or employee of the State with a view toward securing the contract or securing favorable treatment with respect to any determinations concerning the performance of the contract. For breach or violation of this warranty, the State shall have the right to terminate the contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which contractor agreed to supply shall be borne and paid for by the contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

### 47. NONDISCRIMINATION CLAUSE:

- a) During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- b) The contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

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**48. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:**

Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the contractor within the immediately preceding two-year period because of the contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.

**49. ASSIGNMENT OF ANTITRUST ACTIONS:** Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

- a) In submitting a bid to the State, the supplier offers and agrees that if the bid is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, material, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
- b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
- c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
  - i) the assignee has not been injured thereby, or
  - ii) the assignee declines to file a court action for the cause of action.

**50. DRUG-FREE WORKPLACE CERTIFICATION:** The contractor certifies under penalty of perjury under the laws of the State of California that the contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
  - i) the dangers of drug abuse in the workplace;
  - ii) the person's or organization's policy of maintaining a drug-free workplace;
  - iii) any available counseling, rehabilitation and employee assistance programs; and,
  - iv) penalties that may be imposed upon employees for drug abuse violations.
- c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting contract:
  - i) will receive a copy of the company's drug-free policy statement; and,
  - ii) will agree to abide by the terms of the company's statement as a condition of employment on the contract.

**51. YEAR 2000 COMPLIANCE:** Contractor warrants that it will provide only Year 2000 compliant products and/or services to the State in all present and future contracts and that Year 2000 compliant products and/or services meet the following requirements:

- a) For information technology goods and/or services, the contractor warrants and represents that its hardware, software and firmware goods and services delivered under this contract shall be able to accurately process date data (including, but not limited to, calculating, comparing, and/or sequencing) from, into and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations to the extent that other information technology used in combination with the information technology being acquired, properly exchanges date data with it. This warranty and representation is subject to the warranty terms and conditions of this contract. Nothing in this warranty shall be construed to limit any rights or remedies the State may otherwise have under this contract with respect to defects other than Year 2000 performance.
- b) For non-information technology goods and/or services, the contractor warrants and represents that the goods or services delivered under this contract are "Year 2000 compliant". For purposes of this contract, a good or service is Year 2000 compliant if it will continue to function fully before, at and after the Year 2000 without interruption and, if applicable, with full ability to accurately and unambiguously process, display, compare, calculate, manipulate and otherwise utilize date information. This warranty and representation supersedes all warranty disclaimers and limitations and all limitations on liability provided by or through the contractor.
- c) Resellers must obtain written confirmation from the manufacturer that the goods and/or services are Year 2000 compliant, as defined above.

**52. FORCED, CONVICT AND INDENTURED LABOR:** In accordance with PCC Section 6108, contractor warrants that no foreign-made equipment, materials, or supplies furnished to the State pursuant to this contract are produced in whole or in part by forced labor, convict labor, or indentured labor.

**53. RECYCLING:** Contractor hereby certifies under penalty of perjury that a percentage (0% to 100%) of the materials, goods, supplies offered, or products used in the performance of this contract meet or exceed the minimum percentage of recycled material as defined in Section 12161 and 12220 of the PCC.

**54. CHILD SUPPORT COMPLIANCE ACT:** For any contract in excess of \$100,000, the contractor acknowledges in accordance with PCC Section 7110, that:

- a) The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

**55. AMERICANS WITH DISABILITIES ACT:** Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)